



State & Federal Contractors Water Agency

1121 L Street, Suite 802, Sacramento, CA 95814

July 19, 2010

Delta Stewardship Council
650 Capitol Mall, 5th Floor
Sacramento, CA 95814

Re: General Comments, Second Draft Interim Plan

Dear Chairman Isenberg and Council Members:

SFCWA* appreciates the opportunity to provide the following initial general comments in response to the July 14, 2010 Second Draft Interim Plan (IP). We will follow-up with more detailed and comprehensive comments after the Council's July 23rd discussion.

Overall, this Second Draft is an improvement over the First Draft because it provides some of the detail commenters requested on clarifying the Council's role going forward. However, there still remain some issues that suffer from not having benefited from such refinement. While further revisions to the specific language of the draft are necessary, we remain especially concerned with the IP's seeking to reach well beyond what it needs to as an *interim* plan while at the same time failing to satisfy the clear legislative mandate that the Council "develop an interim plan that includes recommendations for early actions, projects, and programs." [Delta Reform Act (Act), Section 85084. Emphasis added.]

The document's repeated statement that the IP is intended to provide a *framework* for early actions and the corollary on page v (lines 5-6) that the IP "will outline processes the Council will use to develop its recommendations for early actions, projects and programs" are not consistent with section 85084's direction that the IP include early actions, projects and programs. Action, not process, was the legislation's expectation.

We urge the Council to give strong direction to staff to make the IP an *action* plan focused on near-term activities that: (a) are not already being pursued by other state and/or federal entities under existing authorities; (b) can provide immediate support to the achievement of the coequal goals; and, (c) reserves most of the Council's administrative processes to developed as part of the Delta Plan to allow significantly more public engagement than can or will result in the next month. Consistent with the Council's discussion in

* SFCWA is a Joint Powers Authority of water contractors that receive water from the State Water Project and the Central Valley Project. Together, SFCWA members serve over 25 million Californians and provide water to irrigate more than 3 million acres of the nation's most productive agricultural lands. SFCWA's mission is to assist its member agencies in assuring a sufficient, reliable and high quality water supply for their customers and maximize the efficient operation and integration of the State Water Project and federal Central Valley Project.

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June, you should strive to provide immediate “value-added” content in identifying *actions, projects and programs* that can and should get underway as soon as possible.

The Council could provide such “value added” by recommending that efforts to address “other stressors” in the Delta system be intensified well beyond current lackluster or non-existent approaches. For example, the Council could recommend to the Fish and Game Commission (FGC), consistent with recent correspondence to the FGC from the National Marine Fisheries Service, that the FGC move immediately to revise its regulations related to limits on the striped bass fishery as a partial means to address non-native predation on native species of concern. In this vein, we also encourage the Council to contact the office of the President’s Council on Environmental Quality which has recently undertaken an initiative to ensure the federal agencies are organized to effectively address “other stressor” problems relative to the Delta. If necessary, SFCWA can provide contact information to your staff.

The description of the “Delta water flows” tool, as part of the IP’s seven “Analytical Tools for Council Action”, needs to be significantly revised. The IP’s description references the flow criteria to be developed by the SWRCB this summer and those to be recommended by the Department of Fish and Game (DFG) before the end of the year. These “flow criteria” are identified as a “tool” to help the Council as part of the “framework” development of the IP. Considering these flow criteria, which do not reflect a legally required balancing among beneficial uses (including meeting the water supply reliability component of the coequal goals), would be improper as a “tool” because these criteria are simply informative and will not equate to the actual flow objectives to be adopted by the SWRCB through a water quality planning proceeding balancing competing beneficial uses of water. It is these objectives that ultimately will shape the water management regime within which the Delta Plan will be implemented. Before a revised water quality control plan is adopted, the Council should limit itself to utilizing the current regulatory regime of the Board’s water quality control plan, including conditions imposed by the Biological Opinions for the State Water Project (SWP) and the federal Central Valley Project (CVP), or as they may be modified, as the “tool” to inform its deliberations when appropriate. The issue of “flow criteria” is not a “core responsibility” of the Council. It is an issue that will inform the Council’s deliberations, but the Council itself does not have a deliberative role related to their development. Delta flows and water management regulation are within the purview of the SWRCB.

On page 28, line 33 appropriately mentions “additional information will be added” over time, including “results” from the BDCP. However, the statement that the SWRCB and DFG flows “will be one of the early considerations of Delta water flow” it is unclear who is doing the “considering”. Is it contemplated that it will be the Council or some other entity[ies]? If the Council is doing the “considering”, the draft needs to explicitly set forth why, for what purpose, and under what authority the Council is to be either involved in the development of flow criteria and/or how it views its role in relation to their development and implementation by the SWRCB.

The clarification provided in the Second Draft IP with respect to the Council’s seeking to develop “Indicators of Progress” in meeting future water supply needs rather than asserting a role in establishing or developing standards related to water conservation etc. is appreciated and we believe appropriate. Still, the statement on page 40, lines 10-11 that links measuring “statewide [water] diversions” to tracking progress in meeting the policy charge of section 85021 should be made more explicit that the assessment of “statewide diversions” would be intended to establish a baseline multi-year average of SWP/CVP water project deliveries as contemplated by the BDCP into the future rather than a present-day snapshot of “statewide diversions”.

While we will provide more editorial and textual comments and suggestions later, there is one such item we wanted to bring to your attention now.

On page 1, lines 24-25 (as well as a similar reference on page 4, line 42), the Delta is identified as “the source of drinking water for nearly two-thirds of the state’s population”. As we noted in our comments on the First

Draft Interim Plan, this is inconsistent with how state water law defines sources of water, as well as the permits for many diversions based on those rights. For the majority of pertinent diversions, the “Delta” is not the “source” of these waters. Rather, most of the water is diverted under permit upstream in the Sierra Nevada, stored and subsequently released into the Sacramento River system where it flows into and through the Delta and subsequently re-diverted by other facilities. To describe both direct diversions from the Delta and permitted appropriations upstream, we suggest, as an alternative: “Nearly two-thirds of the state’s population relies on the Delta watershed for all or part of its drinking water.” Additionally, for the same reasons as outlined above, the use of “its flows” on line 25 is misleading and should not be used.

Finally, as a procedural matter, if the Council intends to adopt a final IP at its August meeting, we respectfully request that the 3rd Draft IP be provided to the public at least two weeks prior to the Council’s meeting so detailed comments may be communicated to the Council for timely consideration prior to the meeting rather than having to present them solely at the meeting itself.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Byron M. Buck", with a long, sweeping horizontal line extending to the right.

Byron M. Buck
Executive Director